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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/556,339	04/24/2000	David G. Worthy	1672/070CON	7890
3775	7590	12/17/2004	EXAMINER	
ELMAN TECHNOLOGY LAW, P.C. P. O. BOX 209 SWARTHMORE, PA 19081-0209			SRIVASTAVA, VIVEK	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/556,339

Applicant(s)

WORTHY, DAVID G.

Examiner

Vivek Srivastava

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/24/00</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 - 7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 – 14 in 6,081,690 of U.S. Patent No. 6,081,690. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to modify the claims in 6,081,690 to get the claims in the instant invention.

Regarding claim 1, claim 1 in the instant application corresponds to claim 1 in 6,081,690. The 'measuring durations' step in claim 1 of the instant application is identical to the 'measuring durations' step in claim 1 in 6,081,90. The 'combining the durations step' in claim 1 of the instant application is identical to the 'combining the durations step' in claim 1 of 6,081,690. The 'adjusting the sensitivity level' in claim 1 of

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the instant application is identical to the 'adjusting the sensitivity level' in claim 1 of 6,081,690. Claim 1 in 6,081,690 further recites additional steps of 'determining a first noise level', 'determining a second noise level', 'selecting a highest noise level', and 'identifying a noisiest subset' which are not recited in claim 1 of the instant application. Since claim 1 of the instant application is a broader recitation of claim 1 in 6,081,690, it would have been obvious to modify claim 1 of 6,081,690 to get claim 1 of the instant application.

Regarding claim 2, claim 2 of the instant application corresponds to claim 4 in 6,081,690. The 'measuring second durations' and 'merging first and second durations' steps in claim 2 of the instant application are identical to the 'measuring second durations' and 'merging first and second durations' steps in claim 4 of 6,081,690. Since claim 2 in the instant application is a broad recitation of claim 4 in 6,081,690, it would have been obvious to modify claim 4 in 6,081,690 to get claim 2 in the instant application.

Regarding claim 3, claim 3 of the instant application corresponds to claim 9 in 6,081,690. The claimed 'sensitivity level is adjusted' step in claim 3 of the instant application is broad recitation of the 'adjusting a sensitivity level' step of claim 9 in 6,081,690. Since claim 3 in the instant application is a broad recitation of claim 9 in 6,081,690, it would have been obvious to modify claim 9 in 6,081,690 to get claim 3 in the instant application.

Regarding claim 4, claim 4 of the instant application corresponds to claim 9 in 6,081,690. The claimed step of 'modifying noise quieting threshold' in claim 4 in the

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instant application corresponds to modifying noise quieting threshold in the step of 'adjusting a sensitivity level' in claim 9 in 6,081,690. Claim 4 in the instant application further recites "noise quieting threshold is a maximum level of noise quieting said survey system achieves in the presence of said portion of said predetermined signals for said one radio station; and said modifying step changes said noise quieting threshold". It would have been obvious to include this limitation in claim 4 of the instant application to ensure the sensitivity level is correctly and accurately adjusted to provide a more correct and accurate survey system.

Regarding claim 5, claim 5 in the instant application corresponds to claim 1 in 6,081,690. Claim 5 in 6,081,690 recites adjusting station bias, claim 1 in the instant application recites the additional limitation of "wherein said station bias is exhibited during a first survey period, and said adjusting step adjusts the sensitivity level to compensate for said station bias during a second survey period, said second survey period following said first survey period". It would have been obvious to include above additional limitation in claim 5 of the instant application to ensure station bias compensation for more than one period i.e. a first and second survey period to provide a more accurate and complete survey.

Regarding claim 6, claim 6 in the instant application corresponds to claim 4 in 6,081,690. The station bias and steps of 'measuring', 'combining', 'comparing' and 'adjusting' equates to the steps of 'measuring', 'combining', 'comparing' and 'adjusting' in 6,081,690. Claim 6 in the instant application recites the additional limitation of a first survey period and repeating the steps for a second survey period. It would have been

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obvious to include above additional limitation in claim 6 of the instant application to ensure station bias compensation for more than one period i.e. a first and second survey period to provide a more accurate and complete survey.

Regarding claim 7, claim 7 in the instant application corresponds to claim 13 in 6,081,690. The claimed 'wherein said portion of predetermined signals are oscillator signals emitted by tuners' equates to the claimed tuners emitting oscillator signals in the header of claim 13. Since claim 7 in the instant application is a broader recitation of claim 13 in 6,081,690, it would have been obvious to modify claim 13 in 6,081,690 to get claim 7 in the instant application.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Worthy (6,643,494) – Detecting harmonics of station survey signals

Worthy (6,684,054) – Detecting harmonics of station survey signals

Worthy (6,813,475) – Interference attenuation of audience survey system


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (703) 305-4038. The examiner can normally be reached on Monday – Friday from 9 am to 6 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (703) 305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vs
12/2/04



VIVEK SRIVASTAVA
PRIMARY EXAMINER